

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

CRAIG CUNNINGHAM,)
Plaintiff,)
v.)
RAPID CAPITAL FINANCE, LLC/RCF;)
CRAIG HECKER;)
GRS TELECOM, INC., f/k/a CallerID4U, Inc.;)
PAUL MADUMO;) Case No. 3:16-cv-02629
GIP TECHNOLOGY, INC.;)
ADA MADUNO;) Hon. Aleta A. Trauger
LUIS MARTINEZ;) U.S. District Court Judge
MERCHANT WORTHY, INC.;)
ROBERT BERNSTEIN;) Hon. Joe Brown
BARI BERNSTEIN;) U.S. Magistrate Judge
MACE HOROWITZ;)
SPECTRUM HEALTH SOLUTIONS, INC.,)
d/b/a Spectrum Lead Generation;)
JOHN/JANE DOES 1-5;)
GATEWAY SALES AND MARKETING, LLC,)
Defendants.)

**DEFENDANTS RAPID CAPITAL FUNDING, LLC/RCF
AND CRAIG HECKER'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT**

Defendants Rapid Capital Funding, LLC/RCF¹ (“Capital Funding”) and Craig Hecker (“Hecker”) (collectively, “Rapid Defendants”), through the undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6) and L.R. 7.01, hereby files this Motion to Dismiss Plaintiff’s Amended Complaint (the “FAC”) [D.E. 8] on the following grounds:

¹ Plaintiff filed his lawsuit against the wrong entity. “Rapid Capital Funding, LLC/RCF, LLC” is not a Florida entity and certainly is not a “Florida Corporation” as alleged. *See* FAC, ¶ 2. It appears Plaintiff may have intended to sue “Rapid Capital Funding, LLC,” which is a Florida limited liability company or “RCF, LLC,” which is also a Florida limited liability company. Although Rapid Capital Funding, LLC and RCF, LLC reserve all defenses, rights, and remedies, including raising lack of capacity as a “specific denial” pursuant to Fed. R. Civ. P. 9(a)(2) should an Answer to the FAC become necessary, Rapid Capital Funding, LLC and RCF, LLC, the entities on whose behalf this Motion to Dismiss is being filed, are nonetheless responding to the FAC via this Motion to Dismiss for purposes of judicial economy and efficiency.

1. Plaintiff improperly lumps Capital Funding, Hecker, and all other co-defendants in this action together, which fails to put each defendant, including each of the Rapid Defendants, on sufficient notice of the allegations and claims Plaintiff is even attempting to assert against each respective defendant.

2. Plaintiff's attempt to plead a claim for violation of Section 227(b) of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227 *et seq.*, fails to state a claim upon which relief may be granted because Plaintiff fails to adequately allege Capital Funding and/or Hecker knowingly contacted Plaintiff's cellular telephone using an "automatic telephone dialing system" or an "artificial or prerecorded voice" as required under Section 227(b) of the TCPA;

3. Plaintiff's attempt to plead a claim for violation of a nonexistent Chapter of the United States Code, Title 47 (*i.e.*, "47 USC(c)(5)") – which Plaintiff presumably meant to be 47 U.S.C. §227(c)(5) – fails to state a claim upon which relief may be granted because Plaintiff fails to adequately allege Capital Funding and/or Hecker knowingly failed to implement procedures for maintaining a do-not-call list; and

4. Plaintiff's attempts to plead claims for violations of the TCPA concerning "[c]alls placed before August 1, 2016" are barred by the doctrine of *res judicata*.

In support of this Motion to Dismiss, the movants rely upon the memorandum of law filed with this Motion, as well as all pleadings and papers on file with the Court in this action, and upon such oral and written evidence as may be presented at the hearing of this Motion, if such hearing is necessary.

Dated: November 18, 2016.

Respectfully submitted,

s/John R. Wingo

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Attorneys for Defendants Rapid Capital Funding, LLC/RCF and Craig Hecker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 18th day of November, 2016, I filed the foregoing with the Clerk of Court using the Court's CM/ECF System which will send electronic notification to all counsel of record. I also placed in the mail a copy of same to be sent to:

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Plaintiff, pro-se

s/John R. Wingo

John R. Wingo